

### Summary of the Rejections

The following identifies the authority and prior art applied to the identified claims for each rejection of the claims set forth in the Office Action dated January 29, 2002.

1. Claim 1 is rejected under 35 U.S.C. Section 102(e) as anticipated by Copple et al. US 6,178,408 B1 filed on July 14, 1999, and issued on January 23, 2001.
2. Claims 2-8 and 10-13 are rejected under Section 103(a) as obvious over Copple et al. in view of Jack et al. US 5,915,244.
3. Claim 9 is rejected under Section 103(a) as obvious over Copple et al. in view of Shoham US 6,285,989 B1 filed on August 7, 1998, and issued on September 4, 2001.
4. Claims 14-16 and 18-20 are rejected under Section 103(a) as obvious over Copple et al. in view of Barzilai et al. US 6,012,045 filed July 1, 1997, and issued January 4, 2000.
5. Claim 17 is rejected under Section 103(a) as obvious over Copple et al. in view of Barzilai et al. and Ausubel US 6,026,383 filed January 4, 1996, and issued February 15, 2000.

Applicant traverses the grounds for each and every rejection for the reasons set forth previously in the response dated July 24, 2002, and further in view of the supplemental declaration of Andrew Perlmutter, a person having personal knowledge of the development history of the on-line incentive points-based auction system embodying the claimed invention, recited in claims 14 and 15 of the present application, that was the subject of a previously submitted declaration under 37 C.F.R. §§1.131 and 1.132.

### Applicant's Arguments

Applicant traverses the rejection of claim 1 under 35 U.S.C. Section 102(e) as anticipated by Copple et al. Copple et al. does not disclose the recited step of "designating, for an auction, a set of auction items from the catalog of potential auction items." The amendment, adding "for an auction" does not change the scope of the originally submitted claim 1. However, Applicant has included the additional phrase to ensure proper interpretation of the recited designating step.

The method recited in claim 1 includes at least three stages to an on-line auction. During a preliminary stage, corresponding to the recited "designating" step and disclosed, by way of example, in step 202 of Fig. 8, an auction sponsor designates a set of items to be included in an on-line auction from a catalog (e.g., global catalog 66 of Fig. 2) of potential auction items. Such step establishes the set of items to be bid upon during a bidding stage (step 206 in Fig. 8 and

described in detail with reference to Fig. 10). The bidding stage (206) is represented in claim 1 by the "providing" and "maintaining" steps. Finally, winning bids are established in an auction post-processing stage corresponding to the recited "identifying" step.

Applicant traverses the Final Office Action's interpretation/construction of the claimed "designating" step. In effect, the Final Office Action does not distinguish between the act of designating the set of auction items that constitute the auction set (step 202), and a user selecting one of the auction items upon which to bid. The Final Office Action refers to disclosure in Copple relating to bidding by users as a teaching of the recited designating step -- which would never be performed by a user since it makes no sense for users to determine the offerings of an auction. It is up to the auction sponsor to select what will be put up for auction. In the context of the recited "designating" step of the recited invention, designation of auction items that are to be the subject of an auction is made from a catalog. Copple neither discloses nor suggests such preliminary step for setting up an auction.

In view of Applicant's previous clarifying amendment with regard to the "designating" step, and current supplementary remarks, Applicant respectfully asserts that the Copple et al. reference neither discloses nor suggests the claimed designating step (associated with setting up the auction site's offerings) recited in claim 1.

If the above-discussed distinction, between "designating" auction items for an auction from a catalog and subsequent bidding upon the previously designated auction items, is not recognized, then Applicant requests application of the Declarations to claim 1 as well. The attachments clearly support a user selecting an auction item upon which to bid. By equating the designating step of claim 1 with a user selecting an item upon which to bid, the Final Office action eliminates the basis for Applicant not using the previously filed Declaration to swear behind the Copple et al. reference with regard to claim 1.

Applicant incorporates and reasserts the previously stated reasons for traversing the Office Action's rejection of claims 2-8 and 10-13 under Section 103(a) as obvious over Copple et al. in view of Jack et al. US 5,915,244.

Applicant incorporates and reasserts the previously stated reasons for traversing the Office Action's rejection of claim 9 under Section 103(a) as obvious over Copple et al. in view of Shoham US 6,285,989 B1 filed on August 7, 1998, and issued on September 4, 2001.

Applicant traverses the rejection of **claims 14-16 and 18-20** under Section 103(a) as obvious over Copple et al. in view of Barzilai et al. US 6,012,045 filed July 1, 1997, and issued January 4, 2000. Applicant traverses the rejection of **claims 14 and 15**, for at least the reason that Copple et al. is not prior art in view of the declaration submitted herewith by Applicant establishing an invention date with regard to claim 14 that predates the 102(e) date (June 14, 1999) for the Copple et al. reference – thereby effectively eliminating the Copple et al. reference as prior art for purposes of this examination.

Pursuant to the request of Examiner Kyle, Applicant submits herewith a supplementary declaration of Andrew Perlmutter, a person having personal knowledge of the activities and events surrounding the creation and use of a working embodiment of the invention recited in claims 14 and 15. Furthermore, in response to the request in the Final Action to relate the attachments of the disclosure to the claims, Applicant notes initially that claim 14 corresponds to Exhibit A, and the single paragraph of claim 15 corresponds to Exhibit B.

With regard to the particular sheets provided in **Exhibit A** (in support of **claim 14**), Applicant notes the following:

Preamble: sheet 1 (screen shot of Ever-Sharp Main auction web page), sheet 2 (web page code);

Participants Database: sheet 3 (Jim Scott's retrieved participant information);

Auction Items Database: sheets 4 and 5 (Auction Hall's screen shots), sheet 6 (Tiffany Lamp page generated from database);

Network Interface: sheet 7 (Main Page for Ever-Sharp Web Site through which auction is accessed);

Participant Authenticator: sheets 8, 9 and 10 (Logon, Registration, Forgotten Password Screen);

Auction Item Display Generator: Sheets 6, 11 and 17 (Tiffany Lamp and Place a Bid Screens -- e.g., sun glasses);

Bid Verifier: Sheets 12, 13, 14 and 15 (Transmit Bid Successful, Return when bid is transmitted, Transmit screen invalid bid, bidder enters bid amount & input validation); and

Bid Register: Sheets 16 and 17 (Bid History)

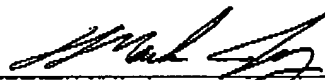
Applicant incorporates and reasserts the previously stated reasons for traversing the Office Action's rejection of claims 16-20.

**CONCLUSION**

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue.

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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Date: March 11, 2003

In re Appln. of Michael A. Arkes  
Application No. 09/414,951

**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this SUPPLEMENTAL RESPONSE/DECLARATION AND REQUEST FOR RECONSIDERATION AFTER FINAL (along with any documents referred to as attached or enclosed) is being transmitted by facsimile to the United States Patent and Trademark Office, Attention: Examiner Charles R. Kyle, Art Unit 2164, Facsimile Number (703) 746-7238, on the date indicated.

Date: March 17, 2003

Norma J. Arkes  
(Typed or printed name of person transmitting)

Norma J. Arkes  
(Signature of person transmitting)